

The Honorable Roslynn R. Mauskopf  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

January 11, 2017

Re: Lofted Coffee LLC v. Lofty Coffee Inc., Case 1:16-cv-02146-RRM-CLP

Dear Judge Mauskopf:

I am an attorney who represents Defendant Lofty Coffee Inc. (“Lofty”) in the above-identified case. I am writing this letter to address the serious and unfounded allegations made by Lofted counsel about the conduct of Mr. Ortiz and the undersigned, made in Lofted Coffee Inc.’s (“Lofted”) letter reply, filed on January 11, 2017. (ECF No. 56)

In light of Lofted’s allegations, attached hereto is a full and complete copy of every “text” communication between Mr. Ortiz and Mr. Pequignot (as referenced in Lofted’s letter twice, in the last paragraph on page 2 and the penultimate paragraph on page 3). (Exhibit 1) All messages are in chronological order. Messages sent by the undersigned are in green and in the right column. Messages sent by Mr. Ortiz are in grey and in the left column. Mr. Ortiz was lead counsel of record during the time that all but the last few messages were sent. The initial text message was sent to Mr. Ortiz to notify him of a settlement counter offer, in response to a settlement offer made by Mr. Ortiz by telephone, several hours after this Court denied Lofted’s request for leave to file a motion to dismiss on November 10, 2016. Lofty need not further characterize the messages, as they speak for themselves as settlement discussions between the parties.

Additionally, Lofty now briefly addresses Lofted’s allegations that Lofty violated discovery orders (as stated twice on page 2, first, with respect to ECF No. 21, and second with respect to the Court’s order of November 15, 2016). First, Lofty’s motion to stay discovery (ECF No. 23) was filed on October 20, 2016, *prior* to the October 21, 2016 deadline referenced by Lofted. The motion was denied without prejudice to bringing it before Your Honor (ECF No.

24), which Lofty did on October 26, 2016. (ECF No. 25). The motion was heard on November 10, 2016. *On the same day* Lofty's second motion to stay (ECF No. 25) discovery was denied, and Lofted's motion for leave to file a motion to dismiss was denied (by Order in open court on November 10, 2016), Lofted contacted Lofty offering to settle this case. A tentative agreement was immediately reached to settle the matter in its entirety. Believing the case to be settled, no discovery was served at that time. When Lofted retracted from settlement on or around November 22, 2016, Lofty promptly served discovery.

Finally, Lofty requests that Lofted's reply letter (ECF No. 56) be placed under seal, for the same reasons Lofted requested that its letter filed November 29, 2016 (ECF No. 35) be placed under seal, i.e., the "concern . . . that in the age of the internet, Mr. Ortiz's actions will harm him professionally in the future in a manner disproportionate to his actions." This request is particularly appropriate given that, as the attached copies of correspondence demonstrate, there is absolutely no foundation for the allegations made against Mr. Ortiz and the undersigned.

Dated: January 11, 2017

Respectfully submitted,

/s/ Matthew A. Pequignot  
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